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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,818	10/27/2003	Yu-Sheng Yao	BHT-3111-370	9670

7590 06/13/2005

BRUCE H. TROXELL  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER
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RAHMJOO, MANUCHER

ART UNIT	PAPER NUMBER
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2676

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/692,818

Applicant(s)

YAO, YU-SHENG

Examiner

Mike Rahmjoo

Art Unit

2676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1- 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1 line 16 recites "...image manually, and recording...". It is not made clear what is performing the "recording". Is it the manual adjusting unit or another unit.

As per claim 1 line 19 recites "...the image reading unit is selectively adjusted...". It is not made clear from the claim language whether the "template selection unit" is performing the adjustment or the "manual adjusting unit".

As per claim 1 line 20 recites "...using one of the template selection unit and the manual adjusting unit...". It is not made clear whether one or both units are utilized.

Claim 11 has similar rejections.

Claims 2- 9 and 12- 18 are indefinite because they depend on indefinite antecedent claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 8 and 11- 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobo et al (US Patent 5,835,616), hereinafter, Lobo in view of Giacchetti (US PAP 2003/0065589).

As per claims 1 and 11 and as to the broadest reasonable interpretation by examiner, Lobo teaches an image-reading unit reading and loading an original facial image see for example figures 3 and 6- 10 and column 2 lines 33- 37 for the finding (loading) a human face taken by a video camera; a feature detection unit recognizing (see for example figure 3) and positioning facial characteristics of the original facial image see for example column 4 lines 50- 67 for the detection of snakelets as facial characteristics of the facial image; a face-adjusting template database storing a plurality of face-adjusting templates that are preset, wherein each of the plurality of face-adjusting templates further comprises different face adjustment parameters that are preset see for example column 9 lines 55- 58 for using the parameters from the refined oval (or the initial oval), both the left and the right iris centers of the template

are placed near the respective irises in the image; making an evaluation to determine whether a proper face adjustment template exists see for example ratios that are to be evaluated for age classification in the templates of figures 15a – f; the implementation of a template on a candied face (application of face adjustment through a template) if the computed ratios agree with the result of the evaluation (finding appropriate face-adjusting template through evaluation) see for example column 12 lines 23- 46; a template selection unit selecting a preset face- adjusting template having a facial characteristic of intended adjustment from the face- adjusting template database and applying the preset face-adjusting template to the original facial image and modifying the facial characteristic of the original facial image see for example column 9 lines 55- 58 for using the parameters (selecting parameters) from the **refined oval (or the initial oval)**, both the left and the right iris centers of the template are placed near the respective irises in the image corresponding to selective adjustment using one of the template selection unit; outputting the adjusted facial images see for example figures 16- 19.

However, Lobo does not a manual adjusting unit adjusting the facial characteristics of the original facial image manually and recording a parameterized processing procedure as a new template, the new template is stored in the face- adjusting template database wherein the original facial image obtained by the image reading unit is selectively adjusted using one of the template selection unit and the manual adjusting unit.

Giacchetti teaches a manual adjusting unit adjusting the facial characteristics of the original facial image manually and recording a parameterized processing procedure and used as a new template, the new template is stored in the face- adjusting template database wherein the original facial image obtained by the image reading unit is selectively adjusted using one of the template selection unit and the manual adjusting unit see for example page 4 paragraph [0055] for an individual performing construction on a facial image by utilizing a user interface.

It would have been made obvious to one of ordinary skilled in the art at the time the invention was made to incorporate the teachings of Giacchetti into Lobo for enabling the individual to simulate use of the selected aesthetic feature on the simulated facial image and to view on the display device an alteration of the simulated facial image having the simulated aesthetic feature and therefore expedite the process of any kind of desirable user adjustment which makes it user friendly and efficient see for example page 1 paragraph [0009].

As per claim 2 Lobo teaches the facial characteristics of the facial i mage comprises the characteristic of relative position and proportion of facial features of the facial image see for example figures 6- 9.

As per claim 3 Lobo teaches the facial characteristics of the facial image comprises the characteristic of skin texture see for example column 25 lines 27- 35 and column 4 lines 33- 36 for wrinkles and snakelets.

As per claims 4 and 12 Lobo teaches the preset face adjustment parameter is a facial expression parameter of the facial image see for example column 21 lines 5- 6 and figures 10- 19.

As per claims 5 and 13 Lobo teaches the preset face adjustment parameter is a proportion parameter of facial feature of the facial image see for example figures 6- 19 and the ratios.

As per claims 6 and 14 Lobo teaches the preset face adjustment parameter is a skin texture parameter see for example column 25 lines 27- 35 for skin color or facial scars and column 4 lines 33- 36 for the curves and wrinkles.

As per claims 7 and 15 Giacchetti teaches the preset face adjustment parameter is a skin parameter of brightness-and-contrast see for example page 4 paragraphs [0057- 0058] for the skin color and tone.

As per claims 8 and 16 Giacchetti teaches the preset face adjustment parameter is a tint parameter of skin color see for example page 4 paragraph [0064] for the skin color and tone.

Claims 9-10 and 17- 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lobo in view of Tian et al (US PAP 2003/0133599), hereinafter, Tian.

As per claims 9- 10 and 17- 18 Lobo does not teaches the preset face-adjusting template is a template having an assortment of dynamic series of facial expression variations and animated comic effect.

However, the background of the prior art of Tian teaches the preset face-adjusting template is a template having an assortment of dynamic series of facial

expression variations and an animated comic effect (happy, 330) see for example figure 3b.

It would have been made obvious to one of ordinary skilled in the art at the time the invention was made to incorporate the teachings of Tian into Lobo to further include variations of expressions and animations so as to automatically label facial expressions thereby facilitating retrieval based on facial expressions and make the device user friendly see for example page 4 paragraph [0055].

### ***Response to Arguments***

Applicant's arguments filed 05/25/2005 have been fully considered but they are not persuasive.

As per applicant's remarks on page 7, applicant argues "...they are selectable either manually or automatically for reuse...".

Examiner respectfully disagrees.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., automatic) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As per applicant's remarks on page 7, applicant argues " the examiner admits that Lobo et al do not teach a manual adjusting unit".



In light of the secondary reference made of the record, examiner agrees as to said feature being absent from the primary art made of the record.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

As per applicant's remarks on page 7, applicant argues "Lobo et al do not teach the original face image obtained by the image reading unit is selectively adjusted one of the template selection unit and the manual adjusting unit".

Examiner fails to see said language as being claimed.

As per applicant's remarks on page 7, applicant argues "...the templates adjust a real human facial image obtained by the image reading unit...".

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., real human facial image) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As per applicant's remarks on page 8, applicant argues " Giacchetti does not teach an image reading unit, an image detection unit..." and further makes the similar arguments regarding Tian et al .

In response to applicant's argument that "Giacchetti does not teach an image reading unit, an image detection unit" or the features as claimed to be absent from Tian et al, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### **Inquiry**

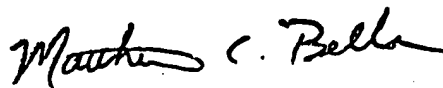
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Rahmjoo whose telephone number is (571) 272-7789. The examiner can normally be reached on 6:30- 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on (571) 272- 7778. The fax phone number for the organization where this application or proceeding is assigned is (703) 872- 9306 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-4357.

Mike Rahmjoo

June 3, 2005

A handwritten signature in black ink that reads "Matthew C. Bella". The signature is written in a cursive, flowing style.

**MATTHEW C. BELLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600**